

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 45-004-13-1-5-00330-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-16-180-009.000-004  
**Assessment Year:** 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013 assessment of his property located at 2439 Polk Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential lot at \$2,300.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On July 23, 2018, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Nowacki’s petition. Neither she nor the Board inspected the subject property.
3. Nowacki appeared pro se. The Assessor appeared by Robert Metz and Terrance Dourousseau, his Hearing Officers. They were all sworn as witnesses.

**RECORD**

4. The official record contains the following:

Petitioner’s Exhibit 1:	Aerial map of subject property
Petitioner’s Exhibit 2:	2011-2013 Property Record Card for subject property
Respondent’s Exhibit 1:	2011-2015 Property Record Card for subject property
5. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.

## BURDEN OF PROOF

6. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).
7. Here, the subject property's assessment remained the same from 2012 to 2013. Nowacki therefore bears the burden of proof.

## SUMMARY OF CONTENTIONS

8. Nowacki's case:
  - a. The land computation section of the subject property's Property Record Card ("PRC") shows the Assessor calculated its value to be \$1,100 after applying a 50% influence factor. Yet, the PRC lists an assessed value of \$2,300 for 2013. Nowacki has always claimed his property's value was \$1,100, and he has been fighting for a decade to have it properly assessed. Nowacki contends a valuation of \$1,100 would be reflective of the subject property's fair market value. *Nowacki testimony; Pet'r Ex. 2.*
  - b. The subject property was in the county's inventory for many years, and Nowacki acquired it at auction for the minimum bid of \$25. Since 2012, the Assessor has reduced the subject property's assessment from \$4,400 down to \$1,100. Nowacki has therefore been paying four times the taxes because of an over-assessment. He claims the over-assessment of his property is negligent and unfair, and that it is part of a strategy to drive people from their homes. If the State were to make the correction to his 2013 assessment, it would be fair and equitable and a step toward addressing the problem of over-assessment in the City of Gary. *Nowacki testimony; Pet'r Ex. 2.*
9. The Assessor's case:
  - a. The PRC Nowacki presented shows the Assessor's land computation for the 2015 tax year, not 2013. The \$1,100 assessment does not appear on a PRC until 2015. The subject property's 2013 assessment was \$2,300 and should remain unchanged. *Metz testimony; Resp't Ex. 1.*

## ANALYSIS

10. Nowacki failed to make a prima facie case for reducing the subject property's 2013 assessment. The Board reached this decision for the following reasons:

- a. The goal of Indiana’s real property assessment system is to arrive at an assessment reflecting the property’s true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. “True tax value” does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.
- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2013, the valuation date was March 1, 2013. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki argued that a land computation on the PRC he submitted demonstrates that the subject property’s 2013 assessment should be \$1,100. However, a competing PRC submitted by the Assessor reveals the 50% influence factor was not applied until 2015. The Board finds the Assessor’s PRC is more accurate. Nowacki’s PRC is therefore insufficient to rebut the presumption that the assessment is correct. *See Eckerling*, 841 N.E.2d at 678 (stating that to successfully make a case for a lower assessment, a taxpayer must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.”)
- d. We also give no weight to Nowacki’s claim regarding the subject property’s decreasing assessment. The Assessor’s decision to decrease the subject property’s assessment to \$1,100 in 2015 does not prove that its 2013 assessment is incorrect. As the Tax Court has explained, “each tax year—and each appeal process—stands alone.” *Fisher v. Carroll Cnty. Ass’r*, 74 N.E. 3d 582 (Ind. Tax Ct. 2017). Evidence of a property’s assessment in one year, therefore, has little bearing on its true tax value in another. *See, e.g., Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001); *Barth, Inc. v. State Bd. of Tax Comm’rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998).
- e. Because Nowacki offered no probative market-based evidence to demonstrate the subject property’s correct market value-in-use, he failed to make a prima facie case for a lower assessment. Where a Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial

evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the subject property's 2013 assessment.

ISSUED: October 19, 2018

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.